

Applicant : OPPER, Reinhold
Serial No. : 10/526,458
Filed : September 1, 2003
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Attorney Docket No. A-10274

REMARKS

Pursuant to entry of this Amendment, claims 1-4, 7-27 and 37-42 are currently pending in the application. Claims 4, 7, 17 and 19 stand withdrawn and claims 37-42 have been newly added herewith. Claims 6, 9, 21, 28, 30, 32 and 34-36 have been canceled without prejudice or disclaimer.

Applicant is concurrently filing an RCE herewith to request entry of this Amendment. Entry of the Amendment filed July 21, 2008 is also respectfully requested.

Specification

The specification is objected to because of a formality. In the July 21 Amendment, Applicant amended the specification in a manner believed to overcome this objection.

Claim Rejection - 35 U.S.C. § 112

Claims 1-3, 8-16, 18 and 20-27 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant has amended the claims in a manner believed to overcome the rejection.

Claim Rejection - 35 U.S.C. § 102

Claims 1-3, 8, 10, 11, 14-16, 18, 20, 22, 23, 26 and 27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tendler (U.S. Patent No. 3,398,627).

Claim 9, 12, 21 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tendler. Applicant respectfully traverses.

Claim 9 has been incorporated into independent claim 1 and claim 21 has been incorporated into independent claim 2. Claims 1 and 2 now recite that “the height of the projection measured from a plane in which the punch edge lies is 2.5% to 5% of the diameter, or mean diameter, of the punch edge.” The Examiner acknowledges that Tendler does not disclose such a projection. Accordingly, Tendler does not anticipate claims 1, 21 or their dependents. Additionally, contrary to the Examiner’s assertions, it would not have been obvious to one of ordinary skill in the art to modify Tendler to include a projection as claimed. In fact, such a modification would be contrary to the direct teachings of Tendler. Therefore, the claimed invention is also not obvious in view of Tendler.

The Examiner asserts that it would have been obvious to make the Tendler angle at the end of the face in the range of 93 to 96 degrees and that this would inherently lead to a projection which protrudes within 2.5% and 5% of the diameter of the punch edge as claimed. Applicant disagrees.

Tendler teaches that the end of the bolt 21 is sharpened into a needle-like point 28. (*see* column 3, lines 17-19). Tendler teaches that such a configuration allows the bolt to be readily driven into a wall in a manner similar to a nail. (*see* column 3, lines 23-27). This teaches away from having an end face in the range of 93 to 96 degrees because that would make the point not sharp or needle-like. Similarly, this teaches away from having a projection which protrudes 2.5% to 5% because, again, such a projection would not have a sharp needle-like point.

Additionally, outside of this teaching away, Tendler does not disclose that the angle of the end face is a result-effective variable. There is nothing in Tendler to suggest that the angle could be optimized such that it would have an angle of 93 to 96 degrees. If Tendler did not teach away from the claimed end face angle, there would be nothing at all about the end face angle, and no reason to optimize this angle.

Furthermore, Tendler is directed to a wall anchor that fastener objects such as picture frames, shelf-brackets, hanger-brackets and the like. (*see* column 1, lines 27-71). There would have been no reason to modify such a wall anchor to have a projection as claimed and such a modification would likely have a negative impact on the performance of the Tendler.

Additionally, claim 1 recites a mandrel head being separated from a sethead by an empty space. For example, the non-limiting embodiment of Fig. 1 of the present application shows an empty space between the set head 4 and the mandrel head 23. In contrast, there is a washer between the alleged set head and mandrel head of Tendler.

Claims 13 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tendler in view of Lesowsky (U.S. Patent No. 4,353,673).

Claim 13 depends from claim 1 and claim 25 depends from claim 2. The Examiner cites Lesowsky only as allegedly disclosing a fastening element made substantially polygonal. Even if the Office Action's assertions regarding Lesowsky are correct, Lesowsky still would not correct the above-noted deficiencies of Tendler with respect to claims 1 and 2. Accordingly, claims 13 and 25 are allowable at least by virtue of their respective dependencies.

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New Claims

Applicant has added new claims 37-41 in order to more fully claim the invention.

Claim 37 is allowable at least because the cited references fail to disclose, teach or suggest a punch edge that forms an angle of between 93 and 96 degrees with a longitudinal axis of the shank in combination with the other features recited therein.

Claims 38-41 depend from claim 37 and are allowable at least by virtue of their dependency.

Conclusion

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

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Applicant hereby requests a two (2) month extension of time to respond.

The USPTO is also authorized all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account 02-2550. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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